



OFFICE OF THE POLICE COMMISSIONER
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October 22, 2018

Memorandum for: Deputy Commissioner, Trials

Re: **Detective David Terrell**
Tax Registry No. 931316
Manhattan Court Section
Disciplinary Case No. 2016-16514

The above named member of the service appeared before Assistant Deputy Commissioner Paul M. Gamble on July 9, 2018, and was charged with the following:

DISCIPLINARY CASE NO. 2016-16514

1. Said Detective David Terrell, assigned to the 42nd Precinct, while off-duty, on or about May 2, 2016, was discourteous to on-duty New York City Police Officer Christopher Rivera, in that said David Terrell, during a traffic stop, stated in sum and substance: "you are driving like a jerk, I have too many years on to be given a speech, I'm inviting you to a smoker, we can handle it there."

P.G. 203-09, Page 1, Paragraph 2

PUBLIC CONTACT - GENERAL

2. Said Detective David Terrell, assigned to the 42nd Precinct, while on-duty, on or about May 2, 2016, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that Detective Terrell engaged in a verbal dispute with New York City Police Officer Christopher Rivera.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

3. Said Detective David Terrell, assigned to the 42nd Precinct, while on-duty, on or about May 2, 2016, did fail and neglect to make complete entries in his Activity Log. (*As amended*)

**P.G. 212-08, Page 1, Paragraph 1
& Page 2, Paragraph 4**

ACTIVITY LOGS

P.G. 203-05, Page 1, Paragraph 4

**PERFORMANCE ON DUTY –
GENERAL**

DETECTIVE DAVID TERRELL

DISCIPLINARY CASE NO. 2016-16514

4. Said Detective David Terrell, assigned to the 42nd Precinct, while off-duty, on or about May 2, 2016, having been directed by on-duty New York City Police Officer Christopher Rivera to place his vehicle in park, did fail and neglect to comply with said order. (*As amended*)

P.G. 203-03, Page 1, Paragraph 2
P.G. 221-20, Page 2, Paragraph 4

**COMPLIANCE WITH ORDERS
CONFRONTATION
SITUATIONS**

5. Said Detective David Terrell, assigned to the 42nd Precinct, on or about and between May 13, 2016 and May 26, 2016, failed and neglected to notify the Operations Unit of the New York City Police Department, that said officer was served with an Order of Protection issued by the Family Court of the State of New York, [REDACTED]

P.G. 206-19, Page 1, Paragraph 1

**ORDERS OF PROTECTION
SERVED ON MEMBERS OF THE
SERVICE**

6. Said Detective David Terrell, assigned to the 42nd Precinct, on or about and between May 13, 2016 and June 1, 2016, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: Said Detective Terrell continued to carry his service weapon, while on-duty, in violation of the Family Court issued Order of Protection, which stated that Detective Terrell must surrender any and all weapons and handguns. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT -
PROHIBITED CONDUCT**

7. Said Detective David Terrell, assigned to the 42nd Precinct, on or about June 1, 2016, failed and neglected to ensure that his 9MM service weapon was loaded with one round of ammunition in the chamber and fifteen rounds in the magazine at all times.

P.G. 204-08, Page 2, Paragraph 13

**FIREARMS - GENERAL
REGULATIONS**

In a Memorandum dated September 13, 2018, Assistant Deputy Commissioner Paul M. Gamble found the Respondent Guilty of Specification Nos. 2, 4-7 and Guilty in Part of Specification Nos. 1 and 3 in Disciplinary Case No. 2016-16514. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the misconduct to which Detective Terrell was found Guilty of and deem that a greater penalty is warranted. Therefore, Detective Terrell shall forfeit thirty (30) vacation days and be placed on one (1) year dismissal probation, as a disciplinary penalty.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT

September 13, 2018

-----X

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2016-16514
Detective David Terrell	:	
Tax Registry No. 931316	:	
Manhattan Court Section	:	

-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Jordan Farnham, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Eric Sanders, Esq.
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30 Wall Street, 8th Fl.
New York, NY 10005

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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CHARGES AND SPECIFICATIONS

1. Said Detective David Terrell, assigned to the 42nd Precinct, while off-duty, on or about May 2, 2016, was discourteous to on-duty New York City Police Officer Christopher Rivera, in that said Detective Terrell, during a traffic stop, stated in sum and substance: "you are driving like a jerk, I have too many years on to be given a speech, I'm inviting you to a smoker, we can handle it there."

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT –
GENERAL REGULATIONS

2. Said Detective David Terrell, assigned to the 42nd Precinct, while on-duty, on or about May 2, 2016, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that Detective Terrell engaged in a verbal dispute with New York City Police Officer Christopher Rivera.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED
CONDUCT – GENERAL REGULATIONS

3. Said Detective David Terrell, assigned to the 42nd Precinct, while on-duty, on or about May 2, 2016, did fail and neglect to make complete entries in his Activity Log. (*As amended*)

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS

& Page 2, Paragraph 4

P.G. 203-05, Page 1, Paragraph 4 PERFORMANCE ON DUTY – GENERAL

4. Said Detective David Terrell, assigned to the 42nd Precinct, while off-duty, on or about May 2, 2016, having been directed by on-duty New York City Police Officer Christopher Rivera to place his vehicle in park, did fail and neglect to comply with said order. (*As amended*)

P.G. 203-03, Page 1, Paragraph 2 COMPLIANCE WITH ORDERS –
GENERAL REGULATIONS

P.G. 221-20, Page 2, Paragraph 4 REGULATIONS – CONFRONTATION
SITUATIONS

5. Said Detective David Terrell, assigned to the 42nd Precinct, on or about and between May 13, 2016 and May 26, 2016, failed and neglected to notify the Operations Unit of the New York City Police Department, that said officer was served with an Order of Protection issued by the Family Court of the State of New York, [REDACTED]

P.G. 206-19, Page 1, Paragraph 1 ORDERS OF PROTECTION SERVED ON
MEMBERS OF THE SERVICE

6. Said Detective David Terrell, assigned to the 42nd Precinct, on or about and between May 13, 2016, and June 1, 2016, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: Said Detective Terrell continued to carry his service weapon, while on-duty, in violation of the Family Court issued Order of Protection, which stated that Detective Terrell must surrender any and all weapons and handguns. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED
CONDUCT – GENERAL REGULATIONS

7. Said Detective David Terrell, assigned to the 42nd Precinct, on or about June 1, 2016, failed and neglected to ensure that his 9MM service weapon was loaded with one round of ammunition in the chamber and fifteen rounds in the magazine at all times.
- P.G. 204-08, Page 2, Paragraph 13 FIREARMS – GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 9, 2018.

Respondent through his counsel entered a plea of Not Guilty to the subject charges. The Department Advocate called Police Officer Christopher Rivera and Sergeant Frank Palumbo as witnesses. Respondent called Crystal Rivera as a witness and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty, in Part, of Specification 1. I find Respondent Guilty of Specification 2. I find Respondent Guilty, in Part, of Specification 3. I find Respondent Guilty of Specifications 4, 5, 6 and 7.

ANALYSIS

The following is a summary of the facts which are not in dispute in this case. On May 2, 2016, at approximately 0900 hours, Police Officer Christopher Rivera, assigned to Highway 1, was en route to the Bronx Criminal Court. As Officer Rivera drove eastbound on East 161st Street, he became aware of an FDNY ambulance directly behind him with its lights and siren activated. Officer Rivera, who was operating an unmarked police vehicle at the time, activated his turret lights and used his loudspeaker to direct traffic in front of him to pull over to the right. Among the cars Officer Rivera directed to move to the right was a gray sedan being operated by Respondent, who was off duty (T. 37, 57, 175). Respondent had a passenger in the car, Crystal Rivera, whom he intended to drop off at the courthouse (T. 65, 162-165, 171, 175, 201).

Officer Rivera conducted a car stop, which was captured on a video and audio recording (Department Exhibit 1). Ms. Rivera was present for the beginning of the car stop but left Respondent's vehicle before Officer Rivera returned from his RMP with Respondent's identification (T. 65). On multiple occasions, from the initial direction from Officer Rivera to Respondent to pull over, until the end of the traffic stop, Respondent was directed to place his vehicle in park and did not do so (T. 33, 35-36, 37-38, 39). Respondent admitted that he was directed to put his car in park twice and that he did not follow directions to do so (T. 196, 197).

At the conclusion of the car stop, Respondent drove away and reported for duty at the 42nd Precinct (T. 183, 202). Approximately 15 minutes later, Respondent, dressed in plainclothes and operating a marked RMP, returned to the area of the Bronx Courthouse on police business. As he approached the courthouse, Respondent observed Officer Rivera and stepped out of his RMP to signal Rivera to pull over so that they could speak to each other. Officer Rivera did so, and Respondent approached the passenger side of his vehicle on foot. In a conversation which was recorded, Respondent, in pertinent part, invited Officer Rivera to a "smoker"¹ (Department 1; T. 43-45). At the end of the conversation, Officer Rivera drove away and resumed his duties.

On May 13, 2016, Respondent was served with an Order of Protection issued by the [REDACTED] Family Court in favor of [REDACTED] (Department Ex. 2). The Order contained a provision that Respondent surrender all firearms (Department Ex. 2, ¶12). The second Order of Protection was issued on May 19, 2016, which was also served upon Respondent (Department Ex. 3). The second Order contained the same provision requiring Respondent to surrender all

¹ A smoker is an off-duty sporting event in which MOS engage in boxing matches.

firearms as did the first Order (Department Ex. 3, ¶12). On June 13, 2016, the third Order of Protection was issued, which was served upon Respondent (Department Ex. 4). The June 13, 2016, Order contained a provision permitting Respondent to carry his firearm on duty (Department Exhibit 4, ¶99).

On June 1, 2016, Respondent was directed to surrender his duty firearm to Sergeant Frank Palumbo at the Bronx Investigations unit (T. 139). Upon receiving Respondent's duty firearm, Sergeant Palumbo's inspection revealed that the firearm had a magazine containing 15 rounds, but did not have a round in the chamber (T. 142). Respondent admitted that he never notified Operations about the issuance of any orders of protection (T. 157-158, 208). Respondent also admitted that between May 13, and June 1, 2016, he carried his firearm while on duty in violation of the first and second orders of protection (T. 207, 208).

At issue in this case is whether Respondent: (1) was discourteous to Officer Rivera during an off-duty traffic stop; (2) engaged in a verbal dispute with Officer Rivera after Respondent had gone on duty a short time later; (3) failed to make complete activity log entries; (4) failed to obey a lawful order from Officer Rivera during the traffic stop to place his vehicle in park; (5) neglected to notify the Operations Unit after he was served with an Order of Protection; (6) carried his service weapon on-duty in violation of the Order of Protection; and (7) failed to carry 15 rounds in the magazine and one round in the chamber of his service weapon at all times.

The following is a summary of the evidence at trial.

The Car Stop

Officer Rivera testified that his unmarked RMP was equipped with a dash camera which was always on (T. 47). The camera automatically began recording whenever the turret lights

were activated but could also record if activated manually (T. 47-48). The RMP was also equipped with a microphone which would not record while kept in its cradle but which began recording sound whenever removed from the cradle and the camera was recording video (T. 49).

Department Exhibit 1 contains four video files which were created by Officer Rivera's dash camera on May 2, 2016. Video file (1) is 14 seconds long and depicts a rear view of Respondent's vehicle as it proceeded eastbound on East 161st Street, approaching the Bronx County Criminal Court Building. Officer Rivera testified that the camera began recording at 09:01 hours as he activated his turret lights to clear the way for an ambulance which was directly behind his RMP (T. 54-55). Officer Rivera's turret lights can be seen reflecting off Respondent's license plate in the video. Respondent's car eventually moves to the right, and Officer Rivera's RMP passes him.

Video file (2) is four minutes, 23 seconds long and picks up the recording at 09:02: hours (T. 57). Officer Rivera's RMP continues to proceed eastbound until the ambulance is seen entering the screen from the left and overtaking him at 09:02:53. The ambulance travels east for a few seconds, then slows down to a stop. Officer Rivera's RMP follows the ambulance at a distance and slows down at the same time the ambulance does. At 09:03:00, Respondent's vehicle enters the screen from the left, overtakes Officer Rivera's RMP and pulls up immediately behind the ambulance. Officer Rivera's RMP then accelerates to pull alongside Respondent's vehicle and comes to a stop. The ambulance begins driving eastbound again, while Respondent's vehicle moves forward, eventually coming to a stop at 09:03:18. It is at this point that the audio portion of the recording begins.

At 09:03:32, Officer Rivera can be seen entering the frame from the left of the video as he approaches Respondent's vehicle from the rear. As Officer Rivera reaches the driver's

window, he states "New York City Highway Patrol, driver's license and registration. Place your vehicle in park" (09:03:34-09:03:39). Officer Rivera again states, "Place your vehicle in park, sir. I'm asking you twice" (09:03:40-09:03:44). Officer Rivera bends down at the waist to look inside the driver compartment and then says, "You're on this job?" A voice, later identified as belonging to Respondent, replies, "Yeah, I'm on this job." Officer Rivera replied, "Let me see your ID, please. You're on camera, don't worry" (09:03:46-09:03:49). Respondent replies, "Okay, I don't care" (09:03:50). Officer Rivera responds, "I don't care either." At this point, both parties continue to speak over each other. Officer Rivera states, "I asked to see your ID. Because I need you to place your car in park. Place your car in park . . . What I authorized you to do was move to the right back when we were on the ramp to let the ambulance get past, okay? That's what I asked you to do. That's what the problem is here." At the same time, Respondent stated, "But what's that mean that I'm on camera? Because you're driving like a jerk? Nah, I'm not putting it in park. Okay, okay." Respondent then said, "Listen, are you finished? Are you going to call a supervisor?" Officer Rivera asks, "Do you want me to, because the ICO will gladly show up." Respondent said, "I don't care. Let him show up." At that point, Officer Rivera reads off Respondent's police identification card and recites Respondent's tax number. Officer Rivera asked Respondent which command he was with, to which Respondent replied, "Four-two." Respondent then said, "So what's that going to do? Call him. Call him." Officer Rivera replied, "Let me tell you one thing, sir . . ." before he is interrupted by Respondent, who said, "Don't tell me anything; if you're going to call the ICO, call the ICO" (09:03:50-09:04:35).

Officer Rivera then walked back toward his RMP and out of camera range; he can then be heard entering his RMP, and the microphone is silenced (09:04:45-09:08:00). At 09:06:07, Respondent's passenger door opens and Crystal Rivera steps out of the vehicle, closes the

passenger door then steps in front of Respondent's car. Ms. Rivera waits for traffic to clear, then crosses the street out of camera range (09:06:07-09:06:39). After approximately four minutes, Officer Rivera reactivated the microphone, stepped out of his RMP and walked back to Respondent's vehicle (09:08:01-09:08:16).

Officer Rivera said, "I suggest next time . . .," before he is again interrupted by Respondent, who said, "Don't give me speeches, bro, don't give me speeches. I've got too much time on" (09:08:17-09:08:29). During the following exchange, both parties to the conversation talk over and interrupt each other. Officer Rivera replied, "All I'm asking you to do is give me respect. That's what I'm asking you to do, is give me respect. I'm in uniform right now, I'm asking you to move for an ambulance, and all you want to do is curse at me and tell me . . .". Respondent stated, "I never cursed at you . . . one time." Officer Rivera replied, "Oh no? Let's rewind the tape, you can hear it as clear as day . . . yes, you did, yes you did." Respondent then declared, "You can hold the mike, you're not going to give me a spiel" to which Police Officer Rivera replies, "I'm trying to explain something to you about your attitude . . .". Respondent asks again, "Are you going to call my ICO?" to which Officer Rivera responded, "There's already notifications in place." Respondent stated, "Then we don't need to talk anymore." Officer Rivera replied, "You can go." Respondent stated, "Give me my ID." Officer Rivera handed Respondent his ID and turned to walk back to his vehicle. Respondent accelerated and pulled into traffic (09:08:30-09:09:13). Officer Rivera eventually makes a U-turn and drives westbound on East 161st Street to its intersection with Grand Concourse, where the tape ends (09:09:14-09:12:41).

On video file (4), the recording resumes at 09:19:18. Officer Rivera's RMP is seen stopped in front of the Bronx Criminal Courthouse, then driving westbound on East 161st Street.

At 09:19:38, a marked RMP is seen entering the frame from the right, then coming to a stop. The driver's side door opens and Respondent steps out of the RMP, attired in an NYPD jacket and civilian clothes. Officer Rivera pulls up next to Respondent and says, "And who are you?" to which Respondent replies, "Remember the cop you pulled over? Yeah, let me talk to you now, because we're both in uniform. First of all, I don't appreciate you lying saying that I was cursing at you. Officer Rivera replied, "First of all, I didn't lie because your exact words . . . 'Don't pull that shit,' yes or no?" Respondent replied, "No, negative." Police Officer Rivera continued, "So you're lying about that; the first thing you said to me . . ." Respondent interrupted, stating, "I had somebody in the car, do you realize that?" Officer Rivera states, "Okay, let's rewind again . . .," and Respondent interrupts again, asking, "Did you forget I had somebody in the car?" Officer Rivera and Respondent proceed to talk over each other, with Officer Rivera asking, "The first thing you said to me was don't pull that shit, yes or no?" and Respondent repeating, "Did you realize that?" Respondent then stated, "I wasn't even talking to you. I was talking to her, so I wasn't even talking to you." Officer Rivera responded, "So you're telling me you're looking at me and speaking to someone else? Okay, you can continue that lie." Respondent asked Officer Rivera for his last name, and he replied, "Rivera, 904 Highway 1." Officer Rivera continued, "I like how you approach me to lie and say whatever you want to say." Respondent then said, "[unintelligible] . . . smoker and I'll invite you." Officer Rivera replied, "Oh, you're inviting me to a smoker now?" Respondent answered, "Absolutely." Officer Rivera responded, "Okay, anything else you want to say?" Respondent said, "I'll invite you to the smoker." Officer Rivera asked again, "Invite me to a smoker?" Respondent said, "We could do it that way." Officer Rivera responded, "Thank you for saying that into the microphone."

Respondent then said, "There's nothing wrong with a smoker; it's legal, that the NYPD."
(09:19:38-09:21:34).

As Officer Rivera begins driving away, he turns the dash camera to record Respondent entering his marked RMP.

Officer Rivera testified that when he first directed Respondent's vehicle to yield for the ambulance, Respondent, unlike the other motorists who pulled over to the right, drove straight for another block and finally pulled over at Sherman and 161st Street (T. 29-30). Officer Rivera drove past Respondent's vehicle, then pulled over to the right to allow the ambulance to pass (T. 30). Once the ambulance passed, Officer Rivera observed Respondent's vehicle go behind his RMP, then around him on his left side into oncoming traffic but then cut back into the eastbound lane (*Id.*). Officer Rivera considered stopping Respondent for following too closely behind an emergency vehicle, crossing the double yellow line on East 161st Street and for having excessively tinted windows (T. 59). Officer Rivera then pulled up alongside Respondent's vehicle; Respondent rolled down his driver's window, and Rivera rolled down his front passenger window (T. 31). Officer Rivera asked Respondent, "What are you doing; what is this?" (*Id.*). Officer Rivera then told Respondent to pull over and pointed indicating he wanted Respondent to stop (T. 33).

Once Respondent pulled over, Officer Rivera issued him directions over the loudspeaker in his RMP to place his vehicle in park and to lower all the windows (*Id.*). Officer Rivera observed from inside his RMP that there were three red lights on the rear of Respondent's vehicle, two tail lights and one brake light; all three lights remained illuminated, indicating that Respondent had not placed his transmission in park (T. 35).

After Officer Rivera walked over to Respondent's vehicle and asked for his license and registration, he observed that Respondent had a wallet open on his lap which displayed his shield and his police identification (T. 37). Officer Rivera conceded that he did express surprise upon learning that Respondent was a Member of Service because his manner and language were aggressive (T. 39). When Officer Rivera returned to his RMP, he allowed Respondent to sit for a time, speculating that since he did not know Respondent, maybe Respondent was having a bad day and needed a minute to "cool off" (T. 40). Officer Rivera stated that while he had previously stopped Members of Service, he had never been in a situation such as the one he was presented with that day (*Id.*). While he was waiting, Officer Rivera made unsuccessful attempts to contact his union delegates (T. 41). After waiting about three minutes, Officer Rivera decided that he would neither call a supervisor to the scene nor issue a summons, attributing his earlier exchange with Respondent to Respondent being upset (*Id.*).

Once Officer Rivera returned Respondent's identification to him and told him that he was free to leave, Rivera made an entry in his activity log, then resumed his search for parking (T. 43). Approximately fifteen minutes later, near East 161st Street and Morris Avenue, Officer Rivera made a U-turn and observed a marked RMP proceeding westbound on East 161st Street (*Id.*). Officer Rivera saw Respondent step from the RMP as he pulled alongside him; Respondent then signaled that he wanted Rivera to pull over (T. 44). When Officer Rivera pulled over, he and Respondent had another verbal exchange, captured on Department Exhibit 1 and discussed above.

Officer Rivera testified that when Respondent stated that he wanted to take him to a smoker, he interpreted that as an invitation to fight (T. 45-46). While Officer Rivera acknowledged that he knew what a smoker was, he stated that he had neither attended nor

participated in one (T. 46). Officer Rivera described Respondent's demeanor at the time he made the proposition as "Angry, very angry" (*Id.*). Officer Rivera stated that he reported the incident to his delegate later that day (T. 47).

Officer Rivera denied that he ever told Respondent to "Pull the fucking car over" (T. 86-87). Officer Rivera also decided not to call a supervisor to the scene because of his belief that Respondent would have been immediately suspended and that sanction would have been too severe "for just getting mad" (T. 98, 99). Officer Rivera stated that while he did not want to get a fellow officer in trouble he did not immediately let Respondent go because the stop had escalated to a verbal dispute in the street and he was uncertain of what he might need to do to protect his professional standing (T. 101-102).

Crystal Rivera testified on behalf of the Respondent. Ms. Rivera testified that she is involved in a personal relationship with Respondent and was in his vehicle on the morning of May 2, 2016 (T. 161, 162). Ms. Rivera stated that as they drove eastbound on East 161st Street, they were in rush hour traffic, and there were cars behind them honking their horns. Ms. Rivera observed an ambulance behind them attempting to pass and she alerted Respondent by saying, "Look, they want us to move." Ms. Rivera testified that there was a car behind them whose driver was on a loudspeaker screaming "Gray car, move out of the way" (T. 162-163). Traffic eventually abated enough for Ms. Rivera and Respondent to pull over and allow the car and the ambulance to pass them; when they started moving forward again, the car in front of them kept hitting its brakes and slowing down (T. 163). Respondent eventually drove around the car, but the car then pulled up next to them; Respondent rolled down his window, and the police officer inside (Officer Rivera) allegedly directed, "Pull the fucking car over" (*Id.*). Ms. Rivera claimed

that Respondent did not respond to Officer Rivera but that he pulled his vehicle over. According to Ms. Rivera, Respondent's demeanor was calm (T. 164).

Ms. Rivera claimed that Officer Rivera was upset and angry with Respondent when he approached their vehicle. Officer Rivera ordered Respondent to put his car in park, but Respondent did not do so. Respondent identified himself as a Member of Service, and Officer Rivera's response was, "Are you kidding me?" Officer Rivera allegedly said that he did not want Respondent's shield but his license and registration. According to Ms. Rivera, Respondent replied, "For what? For driving around you because you were driving like an idiot?" (*Id.*).

After Officer Rivera returned to his car with Respondent's shield, Ms. Rivera stated that Respondent was upset but that she attempted to calm him down before leaving his vehicle to go to jury duty (T. 164-165). Ms. Rivera described Officer Rivera's demeanor as upset and angry because Respondent had gone around him (T. 172).

Respondent testified that he was dropping Crystal Rivera off at the Bronx Criminal Courthouse when he heard the siren² of an ambulance behind him (T. 175). As he drove eastbound on East 161st Street, he saw a car behind him and an RMP behind that car (T. 176). Respondent testified that he saw the RMP activate its turret lights, then saw the car behind him pull over, bringing the RMP directly behind him (*Id.*). According to Respondent, the operator of the RMP activated his loudspeaker and began "screaming, 'Gray car get out of the way!'" (*Id.*). Respondent did not move his vehicle immediately because he believed that he was "pinned in" and decided to wait until the light changed to "speed up and pull out of the way" (*Id.*). Once the

² Respondent testified that he "heard the ambulance light," and later "I'm hearing the lights . . ." The Tribunal will assume that Respondent misspoke and intended to say that he heard the siren.

light turned green, Respondent drove in front of a double-parked truck and pulled over to the right to permit the ambulance to pass (T. 176-177).

Respondent then observed the ambulance drive past him, followed by the RMP; Respondent pulled out and followed the RMP until it began braking and veering toward the right (T. 177). Respondent thought the RMP was going to park, so he drove around it, following the ambulance so that he could drop Ms. Rivera at the courthouse (*Id.*). According to Respondent, the RMP then pulled up next to him: Respondent lowered his window, then the RMP lowered its passenger window, and the operator (Officer Rivera) told Respondent to "Pull your fucking car over" (T. 178). Respondent drove through an intersection, then pulled over in front of the Bronx District Attorney's office parking lot (T. 179).

According to Respondent, Officer Rivera walked up to the driver's window and said something he could not hear, then asked for Respondent's license, registration, and insurance card (T. 180). Respondent testified that he replied, "For what?" (*Id.*). Officer Rivera then repeated his request for Respondent's license, registration, and insurance card; Respondent then opened his wallet and identified himself as a Member of Service (*Id.*). Officer Rivera's response was, "Are you kidding me? You're on this job?" to which Respondent replied, "Listen, I don't want to hear no speeches from you. You know, what are you going to do here?" (*Id.*).

Respondent testified that after he handed his identification to Officer Rivera, Rivera tried to engage him in a discussion but he responded, "Listen, I don't want to hear no speeches from you. I don't have time to hear speeches from you. How much time -- I have too much time on the job to hear speeches from you. Just do whatever you have to do" (T. 180-181).

Respondent continued:

"So at that point, he goes back to the vehicle, and I'm just sitting there. And he walks away, and then I'm talking to Crystal, and I'm like, 'You believe this asshole? He's a dick. I can't believe he did that. Why is he stopping me? I can't believe he's stopping me. For what? Because I went around him?'"

"No. I actually said to him when he did stop me, I said, 'Why -- you upset because you're driving like a jerk?' Because he kept braking before, after the ambulance passed. I asked him. 'You mad because you were driving like a jerk? You were driving like a jerk?'"

"So at that time after this when he stopped me, I went to -- when he stopped me, and we had this conversation, I said to Crystal, I said, 'You believe this guy? He's acting like a fucking jerk.' I was pissed off, but I was talking to her. I never said anything to him. I was talking to her. As he left the area, I was talking to her, and I was like, 'You believe this? This is how he's treating me. This is how you're treating another cop. You see how he's spoken to me.'"

(T. 181).

Respondent then testified that when Officer Rivera returned to his vehicle, Rivera said, "Let me explain something to you . . ." but Respondent interrupted him, saying, "Listen, I don't want to hear what you gotta say. Are you calling ICO over here? Are you writing me a summons? If not, I gotta go to work" (T. 182). Officer Rivera responded that he was not going to write a summons or call for a supervisor; Respondent requested his identification, then departed the location (*Id.*).

Respondent testified further that after reporting for his tour at the 42nd Precinct, he returned to the courthouse area for a meeting (T. 183). Respondent saw Officer Rivera and decided to speak to him because he "didn't like the way he was talking to me" (T. 184). According to Respondent, he said, "Hey, can you do me a favor? Pull over; I want to talk to you?" (*Id.*). Officer Rivera asked who Respondent was and Respondent reminded him that he was "the cop you just five, ten minutes ago, fifteen minutes ago . . ." (T. 184-185).

Once Officer Rivera pulled over, Respondent told him, "You know, the way you were talking to me with my lady in the car was really disrespectful" (T. 185). According to Respondent, Officer Rivera replied, "Oh, I didn't say anything. You were cursing at me" (*Id.*). Respondent then said, "I was not cursing at you. I never cursed at you . . . It's on video. You have it recorded and also you forgot that I had somebody in the car. I never ever cursed at you one time" (*Id.*). After several exchanges, Respondent said, "You know what? I don't want to have this conversation. How about me and you in a smoker?" (*Id.*). Officer Rivera asked, "Are you threatening me?" Respondent said, "No, I'm inviting you to an NYPD sanctioned event" (*Id.*). Officer Rivera said, "I decline," to which Respondent replied, "I figured that" (*Id.*). Officer Rivera asked again, "You're threatening me?" to which Respondent said, "No; it's an NYPD sanctioned event" (T. 185-186). Officer Rivera then departed, and Respondent went to the courthouse (T. 186).

Respondent admitted that when he had his second encounter with Police Officer Rivera, he intended to confront him and to challenge him to a fight in a smoker (T. 202-203). When asked on cross-examination if that was how he normally handled his disagreements at work, Respondent testified that in his experience, "the normal way that police officers have been handling it for the 16 and a half years that I have on, they take it to a smoker" (T. 203). When questioned by the Tribunal as to the circumstances which would justify, in his mind, inviting a fellow officer to a smoker, Respondent answered:

"Another officer being disrespectful, discourteous to one another, for being a number of things.

But for me personally I have 16 and a half years on, I never invited a cop to a Smoker in my entire life. I've never been disrespected like that. I've never had a cop curse at me like that. So that was actually the first time I've ever invited someone to a smoker. but

I've seen it on numerous times where cops have invited each other to Smokers on less than what happened with me and him."

(T. 214).

The Orders of Protection

Sergeant Palumbo testified that on May 17, 2016, he was assigned to investigate an alleged domestic dispute between Respondent and [REDACTED] (T. 121-122). After interviewing [REDACTED], Sergeant Palumbo interviewed Respondent (T. 121). During these interviews, Sergeant Palumbo learned that an Order of Protection was issued in connection with the incident; Sergeant Palumbo asked Respondent to provide him a copy of the Order (T. 123). Respondent eventually sent Sergeant Palumbo the first page of the Order on May 31, 2016 (T. 124). Sergeant Palumbo attempted to close the investigative file the same day and sent it on to his supervisor, Lieutenant Devine, for review; on June 1, 2016, Lieutenant Devine informed Sergeant Palumbo that the second page of the Order was missing (T. 124-125). Sergeant Palumbo eventually obtained two Orders of Protection which had been issued by the Family Court of [REDACTED] on May 13th and May 19, 2016 (Department Ex. 2, 3; T. 127). Sergeant Palumbo also confiscated Respondent's 9MM Sig Sauer firearm on June 1, 2016 (T. 141). While unloading it, consistent with safety protocols, he discovered there was no round in the weapon's chamber (T. 142).

Sergeant Palumbo later obtained a copy of a Petition to Modify an Order of Protection filed by Respondent in the Family Court of [REDACTED] on June 2, 2016, as well as a modified Order of Protection which was issued on June 13, 2016 (Department Ex. 4, 5; T. 127).

Respondent testified that in June 2016, he was placed on modified duty after a domestic incident with [REDACTED]. Respondent testified further that before being served with an Order of

Protection in May 2016, he had begun safeguarding his service weapon at the 42nd Precinct at the end of each tour (T. 188). Respondent did so at the urging of another officer to avoid the prospect of having his weapon removed after being falsely accused of menacing (T. 189). Respondent claimed that he spoke to his ICO about the existence of an Order of Protection and the domestic incident which brought it about but asserted that it was his belief that at the time he did so, the Order of Protection had already been amended to permit him to carry his service weapon on duty (*Id.*). Respondent conceded that he did not speak to anyone at the command regarding safeguarding his weapon and claimed that he had been leaving his service weapon with the desk officer at the 42nd Precinct for about two months before he was served with the initial Order of Protection (T. 190). Respondent also claimed that when he received the Order of Protection, he informed his union representative and his ICO (*Id.*). Respondent claimed that he did not believe he had to notify Operations because he had told his union representative and that representative had told him that he did not need to make any further notifications since he "got GO'd by Captain Gervin" (T. 191).

Respondent also claimed that he was unaware that he had been carrying only fifteen rounds in the magazine and an empty chamber in his service weapon on June 1, 2016, asserting that he did not know how that could be because he had not fired his weapon (T. 194).

I credit the testimony of Officer Rivera as logical, forthright and candid. The majority of his testimony was corroborated by the video recording of the two interactions he had with Respondent. The portions of Officer Rivera's testimony dealing with aspects of the communications which were not captured on either the video or audio recordings were nevertheless credible based upon his demeanor before the Tribunal which remained consistent, even when his testimony was challenged on cross-examination.

I do not credit Respondent's assertion that Officer Rivera instigated what became a contentious confrontation by using profanity toward him, as it is self-serving. Moreover, Respondent made admissions during his testimony before the Tribunal which support a finding of misconduct.

The testimony of Crystal Rivera has limited probative value, as only some parts of her testimony support a finding of misconduct despite the fact that she is a biased witness.

1. Discourtesy

Based upon a preponderance of the credible, relevant evidence, I find that Respondent was discourteous in language and demeanor toward Officer Rivera during the traffic stop. As demonstrated by the footage in Department Exhibit 1, Respondent had to have been aware before the traffic stop that Officer Rivera was, in fact, an on-duty police officer. Officer Rivera had already put on his turret lights and directed Respondent to move to the right to allow the ambulance to pass. The ambulance then passed Officer Rivera's RMP, after it had overtaken Respondent's vehicle. Respondent then accelerated around the RMP and overtook it when it slowed down in apparent response to the ambulance slowing down and coming to a near stop. Respondent's vehicle was also forced to nearly stop behind the ambulance. The evidence does not support Respondent's assertion that Officer Rivera was "driving like a jerk," as he admitted to saying; Respondent's own questionable decision to accelerate ahead of a police vehicle by driving into oncoming traffic, to pull behind an emergency vehicle, makes his accusation seem gratuitous.

Second, the rationale for engaging in a dispute with an on-duty police officer in the apparent performance of his duty is generally dubious for civilian motorists but especially so for

a Member of Service. Respondent's tone and language during the exchange is consistent with the mindset of a Member of Service who saw himself as above being stopped by police like a mere citizen. Respondent's assertion that he had "too many years on to be given a speech" evinces his failure to appreciate that Officer Rivera was performing his duties, rather than fulfilling some personal vendetta. Officer Rivera had every right to request Respondent's license, registration and proof of insurance after personally observing what had transpired. If Officer Rivera had issued Respondent a summons, he would have had the opportunity to challenge it in Traffic Court, as any other motorist would. Once Officer Rivera observed Respondent's police identification, his exclamation, "You're on this job?" was unsurprising, given Respondent's lack of professionalism. At every turn, Respondent sought to escalate the matter into a contest of brinksmanship, rather than to permit a brother officer to perform his assigned duties.

While the record supports a finding that Respondent invited Officer Rivera to a smoker, the challenge was not issued until after Respondent had reported to the 42nd Precinct, obtained a marked RMP and returned to the courthouse area. Under all the attendant circumstances, Respondent was not off-duty, but on-duty, when he made that statement. Based upon the foregoing, I find him Guilty, in Part, of Specification 1.

2. Engaged in a Verbal Dispute

Based upon a preponderance of the credible, relevant evidence, I find that Respondent, while he was on duty, engaged in a verbal dispute with Officer Rivera. As Department Exhibit 1 shows and Respondent admits, he drove to the area of the Bronx Criminal Court after his initial confrontation with Officer Rivera and after he had reported into the 42nd Precinct. A fair interpretation of the second exchange between the two police officers is that Respondent was

dissatisfied with the outcome of the traffic stop, although he did not receive a summons. Based upon Respondent's language, it appears that the discussion was motivated by a desire to "seek satisfaction" for a perceived slight.

Whether or not there is a "culture" within this Department which allows for off-duty pugilistic bouts as part of an event open to Member of Service is not relevant here. In this case, the challenging a fellow police officer to a fistfight over the performance of that officer's official duty is prejudicial to good order, discipline and efficiency in this Department. Based upon the foregoing, I find Respondent Guilty of Specification 2.

3. Failure to Maintain Activity Log

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent failed to make complete entries in his activity log. At the outset, I reject Respondent's assertion that he was not required to maintain an activity log; the existence of his activity log belies such claim, the relevant portions of which are in evidence (Department Ex. 6).

While it is true that there is no entry in his activity log regarding on-duty interactions he had with Officer Rivera on May 2, 2016, the general direction contained in Patrol Guide procedure 212-08 is to require Members of Service to make entries relating to official police action. The most reasonable interpretation of the entire sequence of Respondent's interaction with Officer Rivera is that it began as an official act by Rivera and became a personal confrontation driven by Respondent's reaction to being pulled over. This is not the sort of action the Patrol Guide provision was intended to address.

I do find, however, that Respondent did omit important information regarding the vehicle he utilized (T. 147). Accordingly, I find Respondent Guilty, in Part, of Specification 3.

4. Failure to Comply with Order

Patrol Guide procedure 203-03 requires Members of Service generally to obey the lawful orders and instructions of supervising officers (P.G. 203-03[2]). Patrol Guide procedure 221-20 is also instructive in this scenario. As an off-duty Member of Service who was being confronted by an on-duty Member of Service, Respondent had a duty to obey all directions from the challenging officer (P.G. 221-20[4]). Thus, Respondent's refusal to place his vehicle in park had no lawful basis.

Accordingly, I find Respondent Guilty of Specification 4. I find by a preponderance of the credible evidence that Respondent failed to follow the lawful orders of Officer Rivera to place his vehicle in park. Department Exhibit 1 clearly shows Officer Rivera directing Respondent on multiple occasions to set his vehicle in park. Department Exhibit 1 also shows Respondent saying clearly, "I'm not putting it in park" (Department Ex. 1, 09:04:02).

5. Failure to Notify Operations

Patrol Guide procedure 206-19 requires Members of Service who are notified that they are the subject of an Order of Protection to notify their Commanding Officer immediately (P.G. 206-19[1]). If the command is not open, the affected Member of Service must notify the Internal Affairs Bureau Command Center and obtain a log number, as well as notify the Operations Unit (P.G. 206-19[1][a]).

Sergeant Palumbo testified credibly that Respondent had been served with Orders of Protection on May 13th and May 19th, 2016, and that a search of the Internal Affairs logs did not

reveal that Respondent ever contacted their Command Center to obtain a log number (T. 136-137). Respondent admitted that he did not notify either the Internal Affairs Command Center or the Operations Unit (T. 208, 210). Although Respondent claimed he "mentioned" being served with an Order of Protection to his DEA representative and his ICO, this assertion is not credible given the reality that Respondent was not in a position to unilaterally circumvent the Patrol Guide by deciding for himself alternative notification procedures. Similarly, Respondent's assertion that his DEA representative told him that he was "good," is self-serving and unworthy of belief. Respondent further conceded on cross-examination that he alone bore responsibility for failure to make the proper notifications (T. 209-210).

Based upon the foregoing, I find that the Department Advocate has met its burden of proof by a preponderance of the credible evidence that Respondent failed to notify the Operations Unit concerning the Orders of Protection; accordingly, I find him Guilty of Specification 5.

6. Possession of Firearm in Violation of Orders of Protection

On May 13, 2016, Respondent was served with an Order of Protection which contained the following provision:

"[12] Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following: Respondent to surrender any and all firearm permits, firearms, handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed and do not obtain any further guns or other firearms. Such surrender shall take place immediately, but in no event later than immediately, upon service of this order at and do not obtain any further guns or other firearms. Such surrender shall take place forthwith and immediately at the Rockland County Sheriff's office. AND IT IS HEREBY ORDERED THAT the law enforcement agency to whom such surrender is to be made shall report back to this Court regarding Respondent's compliance with the order of surrender by [specify date];;

(Department Ex. 2).

The second Order of Protection was issued against Respondent on May 19, 2016, which Order contained the same provision prohibiting Respondent from possessing firearms of any kind (Department Ex. 3).

On June 2, 2016, Respondent filed a Multi-Purpose Petition in the [REDACTED] Family Court to amend "the current order of protection" (Department Ex. 5). In this petition, Respondent sought the following relief:

"For the purposes of work hrs. I am asking the court to use my firearm while on duty with N.Y.P.D. I will surrender firearm at the end of duty tour like I have been doing prior to incident."

(*Id.*). The petition is signed by Respondent (*Id.*).

Based upon the explicit prohibition in the Orders of Protection issued on May 13, 2016 and May 19, 2016, against Respondent possessing any firearms, as well as his judicial admission contained in his June 2, 2016, petition to modify the Order of Protection, I find that Respondent knowingly possessed his on-duty firearm in violation of the Orders. In addition, Respondent admitted on cross-examination that from May 13, 2016, the first date of service of an Order of Protection, until June 1, 2016, when he was placed on modified assignment and his firearm was confiscated, he carried his firearm on duty in violation of those Orders (T. 208).

Based upon the foregoing, I find that the Department Advocate has met its burden by a preponderance of the credible, relevant evidence that Respondent possessed a firearm during the corresponding period in violation of an existing Order of Protection; accordingly, I find Respondent Guilty of Specification 6.

7. *Failure to Maintain Load*

Patrol Guide procedure 204-08 directs that Members of Service be armed when in New York City, with limited exceptions (P.G. 204-08[1] & [2]). Members of Service authorized to carry a 9MM pistol will "[e]nsure that one round of ammunition is in the chamber and fifteen rounds in the magazine at all times" (P.G. 204-08[13]).

Sergeant Palumbo testified credibly that on June 1, 2016, he inspected Respondent's 9MM Sig Sauer and the firearm contained fifteen rounds in the magazine but had no round in the chamber (T. 141, 142). Based upon the foregoing, I find that the Department Advocate has met its burden by a preponderance of the credible, relevant evidence that Respondent failed to maintain the prescribed ammunition load in his duty weapon; accordingly, I find Respondent Guilty of Specification 7.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has requested a penalty of 30 vacation days and one-year dismissal probation. I concur with the recommendation, with modification.

In a previous case, a respondent who failed to notify his Commanding Officer that an Order of Protection had been filed against him negotiated a penalty of 15 vacation days (*Disciplinary Case No. 4533/11* [October 15, 2013])[Seven-year police officer with a previous record for improperly adjudicating summonses, negotiated a penalty of 15 vacation days for failing to notify his commanding officer that an order of protection had been filed against him, prepare an

"Acknowledgement of Responsibilities Concerning Court Order Limiting Firearms Possession," and secure his firearm at the precinct at the end of each tour)).

In a previous case, a respondent found guilty of an off-duty verbal altercation with MOS suffered a penalty of five vacation days (*Disciplinary Case No. 81860/06* [October 6, 2008])[Twelve-year member with no prior disciplinary record forfeits five vacation days for failing to identify himself as an MOS to a Traffic Enforcement Agent during an off-duty verbal altercation]).

In a case where a respondent was found guilty of both verbal and physical altercations, he suffered a penalty of 20 vacation days (*Disciplinary Case No. 80072/04* [September 8, 2006])[Twelve-year member with no prior disciplinary record, having pleaded guilty, forfeits 20 vacation days for being disorderly and abusive towards on duty Nassau County police officers and firefighters at the scene of an ongoing fire emergency, repeatedly challenging one of the police officers to a physical altercation, and pushing one of the firefighters]).

Respondent was duly served on May 13, 2016, with an Order of Protection which prohibited him from possessing any firearms. His decision to continue carrying his weapon after that date, albeit only while on duty, exposed him to arrest and criminal sanctions. Furthermore, it exposed this Department to civil liability had he taken any enforcement action during the period he carried his weapon in a clear violation of the Order. For that reason, Respondent's professed reliance on advice from union representatives and unknown veteran police officers is unavailing with respect to his failure to notify the Operations Unit that he was the subject of an Order of Protection. Respondent, as an experienced police officer, has been trained in the enforcement of Orders of Protections and certainly knew that his strict compliance with the conditions of Order was his only acceptable course of action.

Respondent's deportment during the traffic stop was inexcusable, not only because it was in clear violation of Patrol Guide procedures concerning confrontation situations but also because he subjected Officer Rivera, Crystal Rivera and himself to unnecessary risk because of his antagonistic posture. Finally, Respondent's willingness to challenge an on-duty police officer to a fistfight, with full knowledge that he was being recorded while doing so, is inconsistent with good order and discipline in this Department.

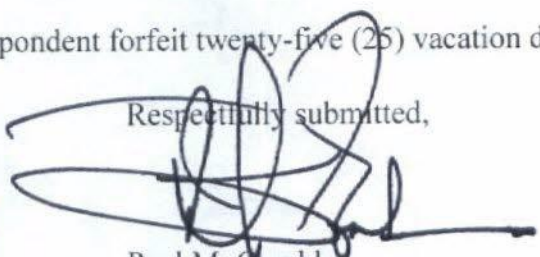
I note that Respondent was disciplined in 2012 for engaging in inappropriate contact with an underage civilian while on-duty, forfeiting 15 vacation days.

I take note of Respondent's admissions under oath to some aspects of his misconduct, his holding a position of trust as the 42nd Precinct Field Intelligence Officer before being modified and his excellent performance evaluations; I find these factors, in the aggregate, to be somewhat mitigating.

I therefore recommend that Respondent be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. In addition, I recommend that Respondent forfeit twenty-five (25) vacation days.



Respectfully submitted,


Paul M. Gamble
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE DAVID TERRELL
TAX REGISTRY NO. 931316
DISCIPLINARY CASE NO. 2016-16514

Respondent was appointed to the Department on July 1, 2002.

On his last three annual performance evaluations, Respondent received an overall rating of 4.0 "Highly Competent" in 2016, and twice received an overall rating of 5.0 "Extremely Competent" in 2015 and 2014. Respondent has been awarded four medals for Excellent Police Duty and two medals for Meritorious Police Duty. [REDACTED]

Respondent has one prior formal disciplinary action. In 2012, he plead guilty to engaging in inappropriate contact with an underage civilian, while on duty and assigned to the 42nd Precinct. Respondent forfeited 15 vacation days.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials